



Office of the City Auditor

WestWorld - Compliance With the Cost-Sharing and Land Use Agreement Report No. 0526A

January 20, 2006

BOR is satisfied that the City is in compliance with the major provisions of the Use Agreement and they have expressed no concern with the focus or nature of activities undertaken at WestWorld. As a result, the question of the appropriate focus of WestWorld was not answered in this audit. This will only be resolved with action by the City and approval by Council to codify the intent of the facility. Ultimately BOR approval is also needed.

CITY COUNCIL

Mayor
Mary Manross

Council
Betty Drake
Wayne Ecton
W.J. "Jim" Lane
Robert Littlefield
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January 20, 2006

To the Most Honorable Mary Manross, Mayor
and Members of the Scottsdale City Council

Transmitted herewith is a report on WestWorld – Compliance With the Cost Sharing and Land Use Agreement, Report No. 0526A. WestWorld management was receptive and cooperative throughout the audit process and we would like to thank them.

During this audit, an issue came to our attention that was not within the scope of our work but which we believe merits reference in this transmittal letter. BOR representatives mentioned to us that TPC has borrowed money from the Basin Management Fund to use as its matching funds for projects undertaken at the facility. This raises the question as to whether such a loan was appropriate and whether BOR approved this arrangement. We did not pursue these issues in our audit because our focus was on WestWorld. However, we recommend that City Council approve a separate focused audit of the Basin Management Fund to resolve these issues.

If you need additional information or have any questions, please contact me at 480-312-7756.

Respectfully submitted,

Cheryl Barcala, CPA, CIA, CFE, CGFM, CISA, CISSP
City Auditor

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EXECUTIVE SUMMARY

At the request of City Council, an audit of WestWorld was included on the 2005 Audit Plan. Specifically, we were asked to look at the following three issues:

- 1) Compliance with the terms of the Cost-Sharing and Land Use Agreement between the City and the United States (Use Agreement).
- 2) Financial aspects of the operation of the facility.
- 3) Management of the facility.

This report addresses the first question – is the City complying with terms and conditions set out in the Use Agreement. Staff assigned to the Phoenix Area Bureau of Reclamation (BOR) Office stated that they believed the City to be in compliance with the majority of requirements. Numerous attempts were made to interview the BOR Regional Manager to verify that sufficient authority had been vested with Area Office staff to approve Use Agreement modifications. As of the close of fieldwork, we were unable to conduct this interview.

When questioned about the current focus of the facility, it was clear from interviews with Phoenix Area staff that BOR has no concerns. Staff stated that evolution was appropriate given the change in environment (rural area to a developed core) but, more importantly, that the administrative aspect of the facility is a local issue that falls outside the purview of BOR.

BOR representatives emphasized three issues that they are primarily concerned with:

- Maintaining the flood handling capacity of the facility.
- Providing a reasonable balance of general recreational activities with fair and equitable fees that fall within the comparable market place.
- Giving priority to public recreational opportunities (i.e., events open to the public) over private events (i.e., rental of a portion of the facility for a private party).

BOR representatives stated that they are satisfied with the City's performance on these issues.

During our interviews, BOR staff did raise a concern with one operational aspect of the facility. This issue deals with third party agreements for use of the facility. Under the terms of the Use Agreement, the City cannot enter into concessionaire or facility use agreements that extend beyond the length of time remaining on the Use Agreement. Currently, there are two agreements with provisions that are tantamount to granting use in perpetuity. BOR

representatives stated that they do not believe these to be valid arrangements until the terms are modified to comply with requirements set out in the Use Agreement.

During completion of this audit segment, we identified that the operations of WestWorld have yet to be codified into City Code even though the City resumed operation of the facility in 1997. City Charter states that:

The council, by ordinance not inconsistent with this charter, shall provide for the organization, conduct and operation of the several offices and departments of the city as established by this charter, for the creation of additional departments, divisions, offices and agencies and for their consolidation, alteration or abolition.

The failure to develop, for Council consideration, an ordinance setting out the operational aspects of the facility has created a situation in which there is no discussion in City Code of the organizational placement of the facility. Moreover, because the Management and Facilities Operations Plan has not been reviewed and approved by Council since 1995, the City has missed an opportunity to establish current policy for the operations of the facility.

The Action Plan on the following pages details our recommendations, management's responses to those recommendations, and the implementation status of management actions. Management's entire response can be found in Appendix A.

ACTION PLAN

No.	Recommendations and Management Response
	The WestWorld General Manager should ensure that steps are taken to:
1	Develop and present to Council for consideration an ordinance that sets out the organizational placement of WestWorld, rules that govern operation of the facility, and the responsible parties.
	<p>Management Response: Agree. The City Council adopted Resolution No. 4689 in December 1996 that provided for City operation of WestWorld, and adopted a staffing plan. A Business Plan for WestWorld was adopted by the City Council in 1998, and an updated Master Plan was adopted by the City Council in March 2003. These plans provided the opportunity for the Council to establish current policy for the operations of the facility. In addition, the City Council has annually adopted a budget ordinance that includes WestWorld, with a description of its organizational placement, goals and strategies, staffing levels, and performance measures. It is expected that an ordinance will continue to be brought forward annually for Council consideration of WestWorld organizational placement and policy direction.</p> <p>Responsible Party: WestWorld Staff Completed By: Annually in July Financial Services Budget Office</p> <p>Auditor Comment: The response does not address the issue outlined in the report.</p>
2	Pursue the use of amendments to formalize substantive changes or additions to the Use Agreement.
	<p>Management Response: Agree. A total of ten amendments have been used to formalize substantive changes or additions to the Use Agreement. WestWorld staff and the City Attorney's Office intend to continue to formalize substantive changes or additions through the use of amendments.</p> <p>Responsible Party: WestWorld Staff Completed By: As needed City Attorney's Office</p> <p>Auditor Comment: The response does not address the issue outlined in the report.</p>
3	Coordinate with BOR staff to identify the laws and regulations that are of primary concern to BOR in relation to the requirement that the City comply with all laws and regulations.
	<p>Management Response: Agree. WestWorld staff will coordinate with BOR staff to identify primary concerns.</p> <p>Responsible Party: WestWorld Staff Completed By: October 2006</p>

No.	Recommendations and Management Response
4	Ensure that all subcontract templates contain provisions for participants to comply with all applicable laws and regulations.
	<p>Management Response: Agree. WestWorld staff will work with the City Attorney's Office to make sure templates are in compliance.</p> <p>Responsible Party: WestWorld Staff Completed By: October 2006 City Attorney's Office</p>
5	Review Use Agreement provisions that relate to plans and programs for effective management of natural resources for things such as erosion control, suppressing wildfires, control vectors and pests, and develop such plans as are determined to be beneficial in protecting the City's interest.
	<p>Management Response: Agree. WestWorld staff will review the Use Agreement and develop appropriate plans.</p> <p>Responsible Party: WestWorld Staff Completed By: October 2006</p>
6	Continue work toward addressing BOR concerns on the existing contracts that do not comply with the restriction to not exceed the term of the Use Agreement.
	<p>Management Response: Agree. A negotiation team is currently working on a new contract, and will make sure the BOR's concerns are addressed.</p> <p>Responsible Party: Contract Negotiation Team Completed By: March 2006</p>

BACKGROUND

WestWorld is an equestrian and special event facility serving the community and visitors. It is located in north Scottsdale, just minutes from the Scottsdale Airport and a number of resorts and golf courses. Management reported that approximately 170 events are scheduled at WestWorld for this year with over 60 percent projected to be equestrian related. The facility sits on land owned by the federal government under the jurisdiction of BOR.

History and the Cost Sharing and Land Use Agreement

In the early 1980's, a planned Airport expansion displaced an equestrian park known as Cholla Park. The land on which the Park was situated was purchased with Federal Aviation Administration funds and a replacement facility was proposed within a portion of the Paradise Valley Detention Basin (also known as Reach 11).

Public meetings with user groups and community representatives were held and in June 1981, City Council approved a master plan. The new park would have two main equestrian arenas, three practice arenas, a trail head and bridle trail, a jump course, a clubhouse, ramadas, restrooms, picnic areas, stables, parking, and quarters for an on-site park manager. In October 1981, City Council awarded a contract for engineering services related to the upcoming construction.

The Use Agreement (through BOR) was finalized in July 1982. Under terms of the Use Agreement, the City was granted the right to use 132 acres east of Pima Road and north of the Central Arizona Project (CAP) canal for public outdoor recreation (a use contemplated in the Master Cooperative Agreement between Maricopa County and BOR). In return, the City agreed to build the facilities set out in the master plan and operate the area as a Scottsdale park.

The City agrees to operate the Project for optimum enhancement of general recreation consistent with authorized project purposes. Details on plans necessary for such enhancement are shown in the project planning document which is attached as Exhibit A which was developed in coordination with the City, Maricopa County and interested recreation interests and is incorporated herein by reference.

SOURCE: Cost Sharing and Land Use Agreement 880052, Article 2.

The Use Agreement set out the name of the new facility as Scottsdale Horseman's Park and placed responsibility for the management and operation with the Parks and Recreation Department in like fashion as any Scottsdale park. Monies for construction of the new facility came from airport expansion funds, BOR, and general funds. The City was also fortunate enough to receive the donation of several buildings for use at the Park.

As a condition of the Use Agreement, the City was to construct the facilities shown in the Scottsdale Horseman's Park Plan and BOR provided financial assistance of approximately \$230,000 for the first phase of construction. Future development was not required but if the City desired to do so, prior approval from the Bureau was required.

Between 1982 and 1984, the City constructed Horseman's Park (the majority of construction was completed by 1983). In this same time frame, the City became aware that the Arabian Horse Association of Arizona was going to lose its property lease in a neighboring community. Questions were also being raised in various tourism studies about the amount, type, and quality of City attractions. The availability of undeveloped land within the Basin was seen as a way to secure a long-term arrangement with the Arabian Horse Show as well as address other opportunities. The City approached BOR with a proposal to build golf courses on the west side of Pima Road and expand Horseman's Park east towards Taliesin. Both requests were granted and in 1984, BOR amended the Use Agreement to include 224 acres to the east up to 108th Street. The firm of Haver, Nunn, and Collamer developed a new master plan with an equestrian center, an enclosed arena, an open air arena, permanent stalls, two polo fields, and an activities center including areas for exhibitions, museums, and equestrian compatible commercial activities specifically designed to attract visitors. The Master Plan was adopted by City Council in January 1985.

Scottsdale citizens approved \$6 million for expanded facilities at the Park in a 1985 bond election. Ultimately, the City spent almost \$10.6 million to construct the equestrian center with an open arena, seven smaller arenas, recreational vehicle (RV) hook-ups, permanent stalls, pads for temporary stalls, and a grand prix field. In February 1986, Council adopted rules, regulations, and a fee schedule for Horseman's Park.

As estimates for the remaining elements were further refined, City staff became convinced that privatization was the most viable option for completion of the covered arena and other segments. Community Planning staff developed a prospectus and interested parties were solicited for a project known as Scottsdale Western and Equestrian Center. Under terms of the prospectus, the City would complete the equestrian portion of the Park and turn over management of the facility under a concessionaire agreement. The remaining segments would be constructed and operated by the private developer.

An internal team evaluated the proposals submitted and selected the one deemed most responsive. An outside firm (Pannell, Kerr, Forester) was hired in May 1986 to evaluate the feasibility of the proposal and in July 1986; the City signed an agreement with a private party to operate and develop the

facility. Privatization brought construction of a covered arena (the Equidome), a restaurant (now known as Monterra), and a large meeting facility (Brett's Barn). The developer also brought a wide range of activities to the facility. A sub-concessionaire offered horseback rides for a period of time, the restaurant catered private events, and the public used the arenas and trails. Efforts were made to market the Park for use as a venue for commercial events to increase revenue.

Operation of the facility under this license agreement continued through the end of 1996. In December of that year, the City and the current operator (a different party from the original developer) agreed to an arrangement that relinquished the rights under the License Agreement in return for a cash purchase, retention of the rights to operate the restaurant, and development of a golf course on the east end of the property. The City took over operation of the equestrian portion of the Park on January 1, 1997.

Requirements of the Cost-Sharing and Use Agreement

Since the City and BOR entered into the Use Agreement in July 1982, it has been amended ten times, with the last change being made in 2004. The table below summarizes what was changed as a result of the amendments.

Amendment Number	Date	Purpose
1	03/14/1984	Increased amount of initial cost-share.
2	02/21/1985	Extended boundary of land under agreement.
3	12/24/1985	Extended term of agreement with 25-year renewal option.
4	09/09/1987	Added 5 acres south of dike at northeast corner of Pima and the aqueduct.
5	11/03/1998	Authorized a Basin Management Fund; set out a requirement for a \$55,000 annual fee to BOR; and provided cost-sharing funds for improvements at the facility.
6	09/07/1999	Authorized wetlands project at Sanctuary Golf Course and \$10,000 in cost-sharing monies.
7	09/07/1999	Added parcel at the southwest corner of Pima and the canal.
8	09/18/2000	Cost-share of \$175,000 for trailhead construction.
9	05/16/2001	Cost-share for acquisition, planting, and irrigation of plant material (76 trees at facility).
10	04/28/2004	Established new process for approval of fees and granted authorization to implement a ticket surcharge. Surcharge must go into Basin Management Fund.

Under terms of the agreement, the City agrees to administer the facility for public outdoor recreational use. The City may assess and collect fees for entrance to the area and use of the facilities but any revenue generated from these fees must be used to develop, operate, maintain, and/or improve the Park. Books, records, and documents of costs and expenses are to be kept and the City must submit an annual report to BOR.

In operating the Park, the City agreed to comply with all applicable federal and state laws and regulations. Included within this scope are various labor laws, Title VI of the Civil Rights Act of 1964, as well as laws and regulations governing environmental concerns. The City also is required to comply with all applicable federal statutes and regulations regarding cultural and historic resources and the identification, inventory, and protection of items identified on the property. If construction takes place at the facility, the Use Agreement requires specific actions to be taken to control environmental pollution. The Use Agreement also requires the City to maintain insurance and require concessionaires to obtain liability or indemnity insurance.

The City is responsible for the operation, maintenance, and replacement of any facilities developed on the property. As a requirement, the facilities must be maintained in a manner satisfactory to BOR and the City must implement plans and programs for the effective management of natural resources (soil erosion, fire suppression, vector control, etc.). As well, the facility must be properly fenced to prohibit access to other undeveloped areas of the Basin, the dike, and canal area. A plan for operation was initially set out in 1982. A Management and Facilities Operations Plan was approved by BOR in 1986 and amended in 1995.

Business Plan

In 1998, City Council approved a Business Plan for the facility. The Vision for the facility, according to this document, is:

WestWorld is a premier, nationally recognized, user friendly equestrian center and special event facility serving our community and target market visitors.

The Mission is set out as follows:

WestWorld of Scottsdale is dedicated to providing public recreational opportunities and a venue for entertainment activities with an emphasis on equestrian and western theme events to citizens and target market visitors. WestWorld will enhance Scottsdale's image as the West's Most Western Town. WestWorld will offer equal public access and excellent customer service.

Critical objectives identified in the Business Plan include:

- Address operational and facility needs and opportunities.
- Establish a foundation on which to build.
- Capital enhancement opportunities.
- Build out opportunities.

Amended Master Plan

In March 2003, City Council approved an updated WestWorld Development Plan. Included within the Plan is:

- A new enclosed multi-purpose building (approximately 100,000 square feet).
- Enclosing and air conditioning the Equidome.
- Covering the Wendell Arena and two smaller arenas.
- Relocating arenas.
- Additional horse barns, a new bedding barn, and boarding facility.
- New show offices.
- New parking areas for event parking and RV/trailer parking.
- An outdoor theater.

Organization and Budget

Organizationally, WestWorld falls within the category of General Government. The total program budget for FY 05/06 is approximately \$2.6 million. Fees and charges generate approximately 70 percent of the revenue, with the remainder coming from the General Fund.

The main revenue sources at the facility include:

1. Facility Rentals – tents, arenas, Brett's Barn.
2. RV spaces – rented to individuals associated with various shows and events.
3. Paid parking - a company administers the paid parking for public events.
4. Food Concessions – there is a list of approved vendors for public consumer oriented events. WestWorld earns a percentage of cash register receipts.
5. Catering - WestWorld earns a percentage of catering receipts.

For FY 05/06, there are 19 budgeted full-time equivalent (FTE) positions. The facility also uses contract workers during the busier periods of the year.

According to the FY 05/06 Budget Book, WestWorld's Mission states:

We are dedicated to remaining a premier, nationally recognized equestrian center and special event facility that provides family entertainment for the metropolitan area and beyond.

Broad Program Goals include:

- Provide a quality public assembly venue offering exemplary services with an emphasis on equestrian events.
- Attract additional special events to WestWorld to provide recreational and entertainment opportunities to the community and our target market.
- Provide a positive economic impact for the City of Scottsdale.

SCOPE AND METHODOLOGY

The objective of this audit was to:

- Determine if the City has achieved compliance with the Cost-Sharing and Land Use Agreement to BOR's satisfaction.

To address this objective, we:

- Reviewed the Use Agreement to identify significant compliance requirements placed upon the City.
- Reviewed Use Agreement amendments and BOR letters to assess their impact on the subject matter of this audit.
- Reviewed prior WestWorld audit work to determine if there was any applicability to the current audit.
- Interviewed WestWorld's General Manager and BOR Phoenix Area Office representatives to obtain their insight into Use Agreement requirements as well as into whether the City was complying with those requirements.
- Made inquiries to BOR's Lower Colorado Regional Director regarding the authority of the Phoenix Area Office over the Use Agreement. However, a response was not received prior to the conclusion of this audit so we were unable to include any such insight into this audit report.
- Reviewed the Scottsdale City Charter, the Scottsdale Revised Code, and the Arizona Revised Statutes to identify applicable sections that address the subject matter of this audit that may be applied as criteria.
- Used the Internet to access the United States Code and the Code of Federal Regulations to review the language of sections cited in the Use Agreement. In addition, asked Phoenix Area Office representatives for insight into the subject matter of the referenced laws. However, we were unable to determine the nature or content of the referenced laws.
- Reviewed WestWorld's current contract templates used for Non-Equestrian Facility Use Licenses, Equestrian Facility Use Licenses, Independent Outside Caterer Agreements, and Independent Food Concessionaire Agreements in order to verify compliance with Use Agreement requirements.

Audit work was conducted in accordance with generally accepted government auditing standards as they relate to expanded scope auditing in a local government environment and as required by Article III, Scottsdale Revised Code, Section 2-117, *et seq.* Survey and fieldwork took place from November to December 2005 with Stella Fusaro and Ramon Ramirez conducting the work.

OBJECTIVE 1: DETERMINE IF THE CITY HAS ACHIEVED COMPLIANCE WITH THE COST-SHARING AND LAND USE AGREEMENT TO BOR'S SATISFACTION.

Finding: While BOR representatives consider the City to be in compliance with the significant terms of the Use Agreement, steps can be taken to better protect the City's interest.

Criteria:

Terms of the Use Agreement specify the following:

Article 2 – Land and Facilities

The facility is to be operated under the supervision and control of the City's Parks and Recreation Department in like fashion as any Scottsdale City park. In addition, the City agreed to operate the project for optimum enhancement of general recreation consistent with authorized project purposes. Exhibit A, indicating that the park is to be designed to provide active equestrian-oriented recreation, outlines the plans for enhancement (types and quantities of facilities which the City was required to design and construct) and the general operational aspects of the facility.

Article 4 – Fees and Charges

Fees are to be collected in accordance with a fee schedule mutually agreed to by the City and BOR. All entrance fees collected are to be used to develop, operate, maintain, and/or improve the Park.

Fees are to be reviewed at least every five years and, under new provisions added with the approval of Amendment 10, the City can add new fees or increase fees under certain circumstances. The amendment also gave the City the authority to add a surcharge to entrance fees. Surcharge proceeds, if applicable, must go into a Basin Management Fund that can only be used with the approval of BOR.

Article 5 – Federal and State Laws

The City is to comply with all applicable federal and state laws and regulations. Specific United States Code and the Code of Federal Regulations provisions are cited and Title VI of the Civil Rights Act of 1964 is also referenced. Terms in the Use Agreement prohibit discrimination and require submittal of certain certifications when subcontractors are hired to complete work at the facility.

Provisions also require the City to insert requirements into concessionaire agreements and facility use agreements.

Finally, the City is to comply with federal statutes and regulations regarding cultural and historic resources and their identification, inventory, and protection.

Article 6 – Operation and Maintenance

The City is to maintain the lands, waters, and facilities in a manner satisfactory to BOR. The City is to submit plans and programs for effective management of the natural resources including issues such as erosion, wildfire suppression, and vector control. The City is required to fence the facility to prohibit unauthorized access to undeveloped lands of the detention basin as well as prevent access to the dike and canal area.

Article 7 – Release of Claims

The City is to require its concessionaires to obtain insurance acceptable to the government. Liability or indemnity insurance are referenced.

Article 9 – Third Party Agreements

There is a requirement that contracts, concession agreements, or permits do not extend beyond the end of the Use Agreement. Third party agreements also must incorporate all applicable provisions set out in the Use Agreement. Finally, third party agreements do not become effective until approved by the Government and no portion of the facility may be reserved for private exclusive uses.

Article 11 – Examination of Records

The City is to maintain books, records, documents, and other evidence pertaining to costs and expenses incurred under the agreement; to properly reflect all net costs, direct and indirect, of labor, materials, equipment, supplies, and services; and other costs and expenses. Accounting records are to be made available for inspection and audit by the Government. The City is to annually submit to BOR a report on public use of the park and facilities.

Article 14 – Environmental Quality

The City is required to take actions to control environmental pollution and comply with federal, state, and local laws and regulations regarding environmental pollution during construction and operation of the facility.

Condition:

In interviews, staff assigned to the BOR Phoenix Area Office indicated that they are satisfied, overall, with the City's compliance with the terms of the Use Agreement.

Article 2

While WestWorld is not operated under the supervision and control of the City's Parks and Recreation Department in like fashion as any Scottsdale City park, BOR representatives stated that they believe the current operational focus is a natural evolution that has occurred since the initial conceptual design of the Park. BOR staff further stated that they do not view the facility as a true active outdoor recreational park, therefore, they are not concerned that the facility is not managed as a City park. BOR staff firmly stated that assigning the administrator of the facility is a local issue and not a concern of the federal government.

With regard to the City's obligation to operate the project for optimum enhancement of general recreation, BOR representatives stated that they believed that this was being accomplished. They noted that WestWorld has evolved a great deal since 1982; a condition to be expected as an operation grows. BOR staff further stated that the federal government is only concerned that there is a balance of recreational opportunities at the facility and, to date, BOR representatives are more than pleased with the wide range of events offered. As a result, they have no concerns with the level of non-equestrian activities at the site.

BOR staff indicated that many of the changes have been reviewed and documented through the approval of master and business plans submitted subsequent to the initial plans of the early 1980s. There is also the possibility that other changes will be made as the facility continues to evolve. City staff, according to BOR representatives, maintain regular contact with BOR when potential changes are considered and formal presentations are made when proposals are solidified.

When questioned about documentation to evidence approval of changes, BOR staff stated that the approach varies depending on the nature of the change and the potential impact. In some instances, approval will be documented only through a letter while other modifications may be formalized through amendments to the Use Agreement. From the perspective of BOR staff, a letter authorizing a particular use carries the same weight as a formal amendment.

In reviewing some of these letters, we noted that they were directed to various City staff involved with oversight of WestWorld operations and signed by various BOR Phoenix Area Office representatives. According to BOR representatives, the Phoenix Area Manager is vested with the authority to approve modifications to the Use Agreement. We were unable to verify this authority.

Article 4

BOR representatives stated that they are absolutely satisfied with the City's efforts to comply with provisions set out in this section. Rate increases are submitted to BOR in a timely fashion, the annual report on Basin Management Fees is submitted as required, and the annual management fee is provided timely.

Article 5

BOR representatives said that they have no concerns over the City's compliance with requirements set out in Article 5. The laws that immediately came to their mind with regard to this provision were those related to Civil Rights and anti-discrimination, Equal Employment Opportunity, the American Disabilities Act, Occupational Safety and Health Administration related requirements, the National Environmental Policy Act, and other requirements that impact cultural and historic resources. BOR staff stated that the City has adequately addressed concerns when issues have been raised in the past.

As part of our work, we attempted to identify the scope of laws and regulations that were covered with the inclusive language set out in the Use Agreement but could not readily determine exact requirements. BOR representatives were also uncertain as to specifics. They speculated that the language was boilerplate requirements in effect in 1982 and requirements may no longer reflect current statutory provisions.

We reviewed contract templates currently used for Non-Equestrian Facility Use Licenses, Equestrian Facility Use Licenses, Independent Outside Caterer Agreements, and Independent Food Concessionaire Agreements to verify that the City had incorporated the provisions required under the Use Agreement. The following provisions are not incorporated as standard language:

- Compliance with Title VI of the Civil Rights Act of 1964.
- Prohibition against discrimination because of race, color, religion, sex, or national origin.
- A requirement for submittal of a "Certification of Nonsegregated Facilities" as a condition of contract award when granting a facility license, caterer agreement, or food concessionaire agreement.
- Provisions that address whether the U.S. government will honor contractual terms in the City's place if the Use Agreement is terminated.
- Provisions that state that the contract is not effective until approved by BOR.

Article 6

BOR representatives stated that the City is maintaining the facility in compliance with requirements. The first priority, according to BOR staff, is that the facility's ability to handle flood events not be impeded. To that end, BOR representatives look at plans for construction, attend related meetings, and conduct onsite reviews.

They stated that the City has complied with requirements to fence the facility as well as those that call out for plans and programs for effective management of the natural resources. BOR staff related that issues such as erosion, wildfire prevention, and vector control have been somewhat addressed through the updated master plan but are more appropriately handled on a case-by-case basis. It is their belief that it was never the intent of the federal government to require development of specific plans. BOR staff interpret contractual provisions as a requirement to develop plans and programs should a need arise.

Article 7

BOR has no issues with the City's compliance with the requirements for indemnification. According to BOR representatives, their primary concern is that the Department of the Interior and BOR be named as an additional insured and they believe that this is incorporated as a condition of third-party agreements.

Article 9

BOR representatives expressed concern with the City's compliance to terms outlined in Article 9. Specifically, this issue deals with situations in past years where agreements have been entered into between the City and third party users that extend beyond the effective period for the Use Agreement. One contract has been resolved and the City is currently negotiating with the representatives of the two remaining contracts. BOR staff stated that they do not believe that these third party contracts are valid license agreements until the issues are resolved.

For the issue of private exclusive use, BOR staff stated that they believe the City has complied with this requirement. Their position is that use of the facility for a private event is acceptable as long as public recreation use is given priority. Therefore, if the facility is available and someone wants to rent a portion for a private party, this use is acceptable.

Articles 11 and 14

BOR representatives stated that they were satisfied with the level of recordkeeping and reporting as well as efforts to comply with environmental requirements.

Cause:

1. City staff responsible for WestWorld operations has taken appropriate steps to:
 - a. Keep BOR representatives informed of changes at the facility.
 - b. Address BOR concerns when issues arise.
2. City staff has relied on letters and other correspondence between BOR and the City to document proposed changes and required approvals instead of restating the Use Agreement.
3. City staff and BOR representatives have not researched all applicable laws and regulations to develop a checklist of what needs to be incorporated into purchase orders and third party agreements.
4. Past practice of formalizing Facility Use Agreements prior to obtaining approval from the appropriate BOR representative.

Effect:

Continued debate in the community as to whether the City is complying with the terms of the Use Agreement.

Failure to formally document modifications to the Use Agreement places the City at risk. There is no assurance that letters and other informal means of providing clarification of requirements will continue to receive the same consideration received in the current environment.

Failure to formally document modifications to the Use Agreement has created a situation in which the records retained at the City Clerk's Office do not capture the current understanding between the two parties. Letters and various other memoranda may exist that alter the requirements but these records are not filed with the City Clerk to ensure that a historical trail is maintained.

Non-compliance with contractual obligations:

- a. If staff is not aware of the scope of laws and regulations, there is little assurance that appropriate requirements will be incorporated into other ancillary agreements.
- b. If custom Facility Use Agreements are approved by the City prior to obtaining BOR approval, there is a risk that the City will agree to terms or conditions that are not acceptable to the federal government.

Recommendations:

Develop and present to Council for consideration an ordinance that sets out the organizational placement of WestWorld, rules that govern operation of the facility, and the responsible parties.

Pursue the use of amendments to formalize substantive changes or additions to the Use Agreement.

Coordinate with BOR staff to identify the laws and regulations that are of primary concern to BOR in relation to the requirement that the City comply with all laws and regulations.

Ensure that all subcontract templates contain provisions for participants to comply with all applicable laws and regulations.

Review Use Agreement provisions that relate to plans and programs for effective management of natural resources for things such as erosion control, suppressing wildfires, control vectors and pests, and develop such plans as are determined to be beneficial in protecting the City's interest.

Continue work toward addressing BOR concerns on the existing contracts that do not comply with the restriction to not exceed the term of the Use Agreement.

APPENDIX A – MANAGEMENT RESPONSE

To: Cheryl Barcala, City Auditor

From: Roger Klingler, Assistant City Manager

Subject: WestWorld Audit Response

Date: January 20, 2006

In compliance with a request from Ramon Ramirez, this is a signed notice that I provided Management Responses to this audit yesterday, January 20, 2006 in an e-mail at 4:25 pm.


Roger Klingler

WestWorld Audit No. 0526A

Action Plan Recommendations and Responses

Recommendation 1: Develop and present to Council for consideration an ordinance that sets out the organizational placement of WestWorld, rules that govern operation of the facility, and the responsible parties.

Management Response: Agree. The City Council adopted Resolution No. 4689 in December 1996 that provided for City operation of WestWorld, and adopted a staffing plan. A Business Plan for WestWorld was adopted by the City Council in 1998, and an updated Master Plan was adopted by the City Council in March 2003. These plans provided the opportunity for the Council to establish current policy for the operations of the facility. In addition, the City Council has annually adopted a budget ordinance that includes WestWorld, with a description of its organizational placement, goals and strategies, staffing levels, and performance measures. It is expected that an ordinance will continue to be brought forward annually for Council consideration of WestWorld organizational placement and policy direction.

Responsible Parties: WestWorld Staff/Financial Services Budget Office

Completed By: Annually in July

Recommendation 2: Agree. Pursue the use of amendments to formalize substantive changes or additions to the Use Agreement

Management Response: A total of ten amendments have been used to formalize substantive changes or additions to the Use Agreement. WestWorld staff and the City Attorney's Office intend to continue to formalize substantive changes or additions through the use of amendments.

Responsible Parties: WestWorld Staff /City Attorney's Office

Completed By: As needed

Recommendation 3: Coordinate with BOR staff to identify the laws and regulations that are of primary concern to the BOR in relation to the requirement that the City comply with all laws and regulations.

Management Response: Agree. WestWorld staff will coordinate with BOR staff to identify primary concerns.

Responsible Party: WestWorld Staff

Completed by: October 2006

Recommendation 4: Ensure that all subcontract templates contain provisions for participants to comply with all applicable laws and regulations.

Management Response: Agree. WestWorld staff will work with the City Attorney's Office to make sure templates are in compliance.

Responsible Parties: WestWorld Staff/City Attorney's Office

Completed By: October 2006

Recommendation 5: Review Use Agreement provisions that relate to plans and programs for effective management of natural resources for things such as erosion control, suppressing wildfires, control vectors and pests, and develop such plans as are determined to be beneficial to protecting the City's interest.

Management Response: Agree. WestWorld staff will review the Use Agreement and develop appropriate plans.

Responsible Party: WestWorld Staff

Completed By: October 2006

Recommendation 6: Continue working toward addressing BOR concerns on the existing contract that does not comply with the restriction to not exceed the term of the Use Agreement

Management Response: Agree. A negotiation team is currently working on a new contract, and will make sure the BOR's concerns are addressed

Responsible Party Contract Negotiation Team

Complete By: March 2006